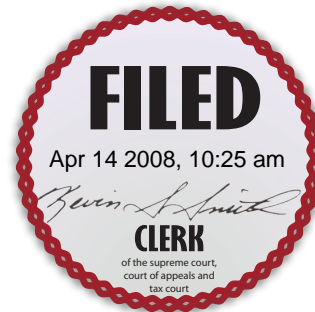


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RANDALL J. SCOTT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 38A04-0801-CR-68

APPEAL FROM THE JAY CIRCUIT COURT
The Honorable Brian D. Hutchison, Judge
Cause No. 38C01-0109-CF-34

April 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Randall J. Scott appeals following his guilty plea to two counts of Dealing in Methamphetamine, a class B felony, and Intimidation, a class D felony. Scott argues that the trial court erroneously imposed a \$5,000 fine when the plea agreement did not specify that a fine would be imposed and that his convictions for dealing in methamphetamine violate the prohibition against double jeopardy. Finding that the trial court erred by imposing the fine and finding no other error, we affirm in part, reverse in part, and remand with instructions to revise the judgment of conviction.

FACTS

On September 5, 2001, the State charged Scott with possession of a controlled substance, possession of marijuana, and two counts of dealing in methamphetamine in Cause Number 38C01-0109-CF-34 (Cause 34). On August 8, 2002, the State charged Scott with pointing a firearm and intimidation in what eventually became Cause Number 38C01-0211-FD-4 (Cause 4).

On December 20, 2002, Scott pleaded guilty pursuant to a written plea agreement that disposed of both Cause Numbers. In Cause 34, Scott pleaded guilty to two counts of class B felony dealing in methamphetamine, and in Cause 4, Scott pleaded guilty to class D felony intimidation. In exchange, the State dismissed the remaining charges. The plea agreement provided that the maximum sentence in Cause 34 was seventeen years and that the maximum sentence in Cause 4 was three years. The agreement did not include a provision for a fine. The trial court sentenced Scott to fourteen years imprisonment in Cause 34 and to six months

executed with two and one-half years of probation in Cause 4. Additionally, the trial court imposed a fine of \$5,000 in Cause 4.

On May 3, 2007, Scott sought leave to file a belated notice of appeal in a pro se petition. The motion referred only to Cause 34 and was silent as to Cause 4. The State did not oppose the petition and the trial court granted it on December 11, 2007. Scott now brings this belated appeal.

DISCUSSION AND DECISION

I. The \$5,000 Fine in Cause 4

Scott first argues that the trial court erroneously imposed a \$5,000 fine in Cause 4 when the plea agreement did not provide for the imposition of a fine. The State initially responds by arguing that Cause 4 is not properly before us, inasmuch as Scott's petition to file belated appeal and notice of appeal refer only to Cause 34 and are silent as to Cause 4. In examining the appellant's case summary, it is evident that the omission was merely an inadvertent error. Although the summary refers only to Cause 34, it describes the sentences imposed in both Cause Numbers and the \$5,000 fine. Moreover, the statement of anticipated issues for appeal includes the issue regarding the fine. Finally, as stated above, the plea agreement encompassed both Causes. Given our wont to conserve judicial resources, under these circumstances we elect to address the fine imposed in Cause 4.

The State admirably acknowledges that the trial court's imposition of a fine when the written plea agreement did not provide for a fine was erroneous. Appellee's Br. p. 6; see also Gipperich v. State, 658 N.E.2d 946, 949-50 (Ind. Ct. App. 1995) (holding that the trial court

“improperly wavered from the terms of the accepted plea agreement by imposing fines for which no provision existed in the agreement”). We agree, and hereby reverse the trial court on this basis and remand with instructions to amend the judgment of conviction accordingly.

II. Double Jeopardy

Scott next argues that his convictions for two counts of dealing in methamphetamine violate the prohibition against double jeopardy. Inasmuch as he pleaded guilty, however, he may not bring a direct challenge to those convictions. Mapp v. State, 770 N.E.2d 332, 334-35 (Ind. 2002) (holding that a defendant who pleads guilty waives a number of rights, including “the right to attack collaterally one’s plea based on double jeopardy”). Thus, although Scott is entitled to seek post-conviction relief, he may not bring a direct appeal on this basis.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions to revise the judgment of conviction by removing the \$5,000 fine in Cause 4.

RILEY, J., and ROBB, J., concur.